

<b>AMENDED APPEAL BRIEF</b>			Docket No. <b>FULLN014USPT02</b>
Serial No. <b>10/816,712</b>	Filing Date <b>04/02/2004</b>	Examiner <b>Andrew W. Sutton</b>	Group Art Unit <b>3765</b>
Applicant:	<b>Piper et al.</b>		
Invention:	<b>RETENTION SYSTEM FOR HEADGEAR</b>		

**Mail Stop Appeal Brief - Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

This Amended Appeal Brief is filed on appeal from the decision of the Examiner dated February 3, 2009 rejecting claims 1-18 and 20 in the above-referenced patent application and the Notice of Non-Compliant Appeal Brief dated June 23, 2009.

### **REAL PARTY IN INTEREST**

The real party in interest in connection with this appeal is Full90 Sports, Inc. as assignee of the entire right, title and interest in the application from the inventors Dennis Piper, John Lampe and William Cleveland. The assignment is recorded at reel/frame 014681/0001.

### **RELATED APPEALS AND INTERFERENCES**

Appellant and appellant's legal representative are unaware of any other appeal or interference which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

## STATUS OF CLAIMS

The application was filed on April 2, 2004 with claims 1-20. Claims 1-8, 13, 14, 17 and 20 were amended, and claim 19 canceled in an Amendment and Response originally filed on January 30, 2006 and filed again on February 7, 2006 in response to a Notice of Non-Compliant Amendment. Claims 1-18 and 20 remain pending in the application. Claims 1-18 and 20 have been finally rejected. No claims have been allowed.

The rejection of claims 1-18 and 20 is appealed. A copy of the claims involved in this appeal is provided in the Appendix section of this Appeal Brief.

## **STATUS OF AMENDMENTS**

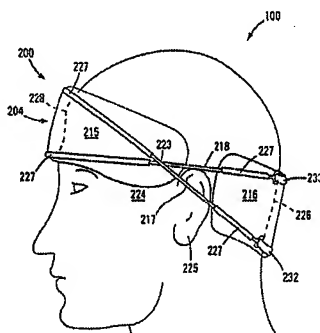
No amendment has been filed subsequent to final rejection of the appealed claims.

## SUMMARY OF CLAIMED SUBJECT MATTER

The application contains four independent claims (claims 1, 9, 14 and 20).

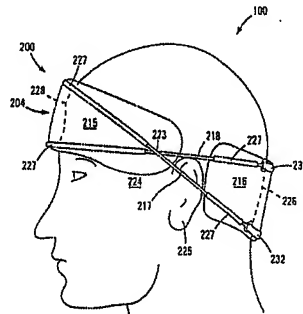
### CLAIM 1

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) and a retention element (217) and (218) cooperatively attached to the protective pad (215), with the retention element (217) and (218) embodying at least two separate and distinct circumferential lines of retention (111) and (112) intersecting at diametric points of intersection [(102) in Figure 1d and (223) in Figure 2a] when the headguard (200) is worn on the head (100). [Page 12, Line 29 through Page 15, Line 6 and Figures 1d and 2a].



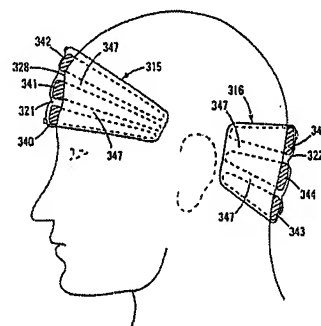
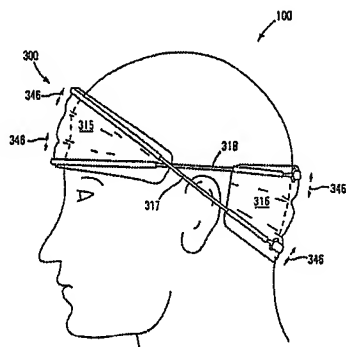
# CLAIM 9

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) and a pair of separate and distinct retention elements (217) and (218) attached to the protective pad (215) and intersecting at diametric points of intersection (223). [Page 12, Line 29 through Page 15, Line 6 and Figure 2a].



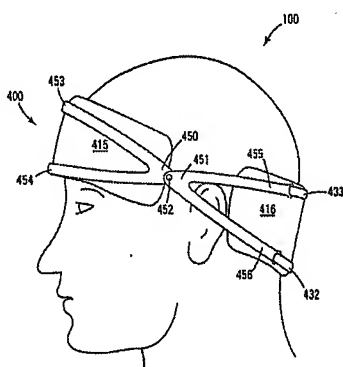
# CLAIM 14

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece (315) and a rear protective piece (316) including a plurality of pads (340), (341), (342) and (343), (344), (345) capable of shifting relative to one another. [Page 16, Lines 9-30 and Figures 3a and 3b].



## CLAIM 20

A Fourth Embodiment of the Present Claimed Invention (claim 20) includes a front piece (415) and a rear piece (416) pivotally attached to one another at diametrically opposed pivot points (452) whereby the pieces (415) and (416) may be independently pivoted about the pivot points (452). The front and rear pieces (415) and (416) are constructed to protect a wearer against physical injury from a blow to the head (100). [Page 17, Lines 1 -18 and Figure 4].





## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. The rejection of claims 1, 5-9, 12 and 13 under 35 U.S.C. §102(b) as anticipated by Morgan (United States Patent No. 4,279,037).
2. The rejection of claims 1, 6, 9 and 12 under 35 U.S.C. §102(b) as anticipated by Mattes (054) (United States Patent No. 4,741,054).
3. The rejection of claim 20 under 35 U.S.C. §102(b) as anticipated by Wallman (United States Patent No. 1,638,756).
4. The rejection of claims 2-4, 10 and 11 under 35 U.S.C. §103(a) as obvious over Mattes (054) (United States Patent No. 4,741,054) in view of Gwon (United States Patent No. 4,068,323).
5. The rejection of claims 14-16 and 18 under 35 U.S.C. §103(a) as obvious over Steffen (United States Patent No. 3,171,133) in view of Lampe et al. (399) (United States Patent No. 6,397,399).
6. The rejection of claim 17 under 35 U.S.C. §103(a) as obvious over Steffen (United States Patent No. 3,171,133) in view of Lampe et al. (399) (United States Patent No. 6,397,399) and further in view of Mattes (054) (United States Patent No. 4,741,054).

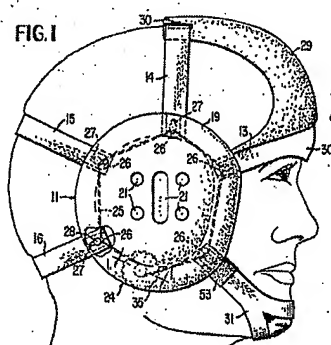
## ARGUMENT

### *Objections/Rejections Under 35 U.S.C. § 102*

**1.0**    *The Examiner has rejected claims 1, 5-9, 12 and 13 under 35 U.S.C. §102(b) as anticipated by Morgan.*

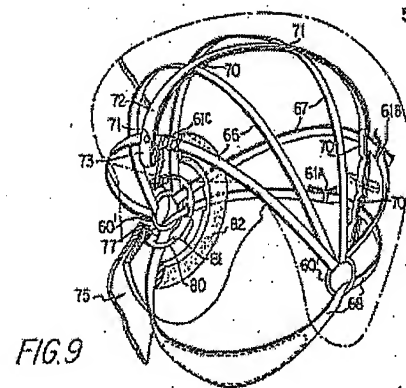
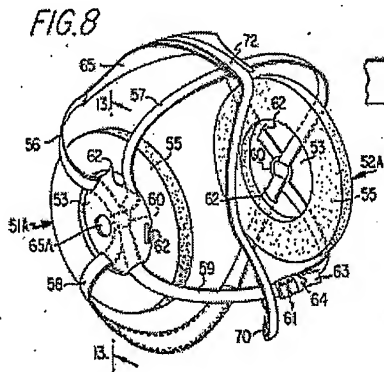
#### SUMMARY OF CITED REFERENCE

**Morgan** (United States Patent No. 4,279,037) discloses a protective helmet to be worn on a human head. One embodiment of the helmet (represented by FIG 1) includes a pair of ear pads (11 and 12) and a plurality of straps (13, 14, 15 and 16) attached at each end to one of the ear pads (11 and 12). The straps (13, 14, 15 and 16) are angularly spaced about each ear pad (11 and 12) such that NO circumferential lines of retention are formed when the helmet is worn on the head.



Another embodiment of the helmet (represented by FIGs 8 and 9) further includes bearings (60) concentrically located within each of the ear pads through which an elongated strip of material is looped and returned to form dual side-by-side retention straps. While Morgan does not teach or suggest such an arrangement, the straps formed by this technique could - by coincidence - form circumferential lines of retention (*e.g.*, one strap formed from a first strip and one strap formed from a second strip may be configured and arranged to form a first circumferential line of retention, with the other strap formed from the first strip and the other strap formed from the second strip configured and arranged to form a second circumferential line

of retention), but such circumferential lines of retention would be physically and functionally interconnected and interrelated.



#### SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

#### LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil*

Co. of California, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the “exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference.” Atlas Powder Co. v. E.I. duPont De Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*MORGAN DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad. The helmets disclosed by Morgan do NOT have a circumferential line of retention. Furthermore, even in the event the straps on the embodiment of the helmet represented by FIGs 8 and 9 are coincidentally arranged to form circumferential lines of retention, such circumferential lines of retention would NOT be separate and distinct. Withdrawal of this rejection is respectfully requested.

The Response to Arguments section in the February 3, 2009 Office Action indicates that the Examiner’s rejection is based upon a construction of the claim limitation “*circumferential*” which is much broader than the meaning intended and ascribed by Applicant in the patent application. Specifically, the Examiner states on pages 6-7 of the Office Action that “ ... *the claims ... do not require that the [circumferential] lines of retention be continuous about a circumference ...*” and “*Note that the mere limitation of “circumferential” is not seen to require that the lines of retention “encircle” or be “around” the head ...*”.

Pending claims are given the broadest reasonable interpretation consistent with the specification. Phillips v. AWH Corp., 415 F.3d 1303, 75 U.S.P.Q. 1321 (Fed. Cir. 2005) and MPEP § 2111 [CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION].

The dictionary definition of “*circumferential*” makes it clear that circumferential is an adjective indicating a location at “*the external boundary or surface of a figure or object*”. Webster’s Ninth New Collegiate Dictionary. The dictionary definition, however, is silent as to whether circumferential describes something which merely touches a given external boundary at a single point on a circumference, extends partially along a given external boundary about a circumference, or extends completely around an external boundary about a circumference. Hence, in accordance with the holding of Phillips the specification of the patent application must be consulted to determine if the Applicant has provided any guidance as to which of these possible interpretations was intended by Applicant.

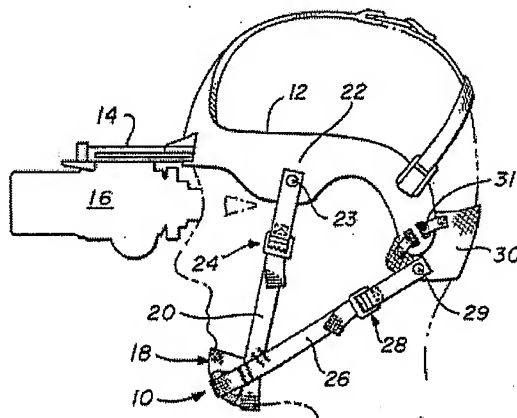
The application employs “circumferential” to describe the physical position of two lines of retention defined by a headguard relative to a head when the headguard is worn on the head. The application clearly and consistently shows and describes “circumferential lines of retention” as lines extending completely around the head about a circumference. There is absolutely nothing in the application indicating or suggesting that a “circumferential line of retention” includes a line which merely touches the boundary of the head or extends partially around the head about a circumference. Hence, when properly viewed in light of the specification, it is clear that Applicant uses and defines the claim limitation “circumferential line of retention” to mean a line of retention extending completely around the surface of the head about a circumference. The Examiner’s proposed broader interpretation of “circumferential” ignores the clear disclosure, teaching and guidance provided by the specification.

In an effort to expedite handling of this appeal and move this application forward to allowance, Applicant admits that at least claim 1 in the present patent application would be anticipated by Morgan (United States Patent No. 4,279,037) in the event “circumferential” is broadly interpreted as suggested by the Examiner. However, Applicant is not claiming and has never intended to claim such an invention. In the event the Board upholds the Examiner’s rejections on the basis that “circumferential” must be given the broader interpretation suggested by the Examiner, Applicant requests advice and guidance as to specific language considered acceptable for delineating the intended scope of protection sought by Applicant.

**2.0** *The Examiner has rejected claims 1, 6, 9 and 12 under 35 U.S.C. §102(b) as anticipated by Mattes (054).*

#### SUMMARY OF CITED REFERENCE

**Mattes (054)** (United States Patent No. 4,741,054) discloses a chin cup (18) for use with military headgear (12). Mattes (054) attaches the chin cup (18) to the headgear (12) with a pair of overlapping chin straps (20 and 26). Chin strap (20), as shown in FIG 1, does NOT form a circumferential line of retention as the headgear has an open crown. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of intersection do NOT occur across the diameter of a circumferential line of retention).



#### SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

#### LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed.Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

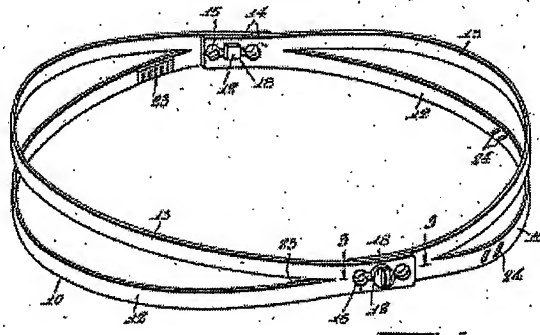
#### *MATTES (054) DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad. The helmet disclosed by Mattes does NOT have two circumferential lines of retention. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of intersection would NOT occur across the diameter of a circumferential line of retention). Withdrawal of this rejection is respectfully requested.

3.0     *The Examiner has rejected claim 20 under 35 U.S.C. §102(b) as anticipated by Wallman.*

#### SUMMARY OF CITED REFERENCE

**Wallman** (United States Patent No. 1,638,756) discloses an ornamental head dress having a front section (10) and a back section (11), each having an upper band (13) and a lower band (12). The front (10) and back (11) sections are adjustably connected at diametrically opposed points of attachment (18) for fitting of the head dress.



#### SUMMARY OF CLAIMED INVENTION

A Fourth Embodiment of the Present Claimed Invention (claim 20) includes a front piece and a rear piece pivotally attached to one another at diametrically opposed pivot points whereby the pieces may be independently pivoted about the pivot points. The front and rear pieces are constructed to protect a wearer against physical injury from a blow to the head.

#### LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed.Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the “exclusion of a claimed element from a prior art reference is enough to negate anticipation by



that reference.” Atlas Powder Co. v. E.I. duPont De Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

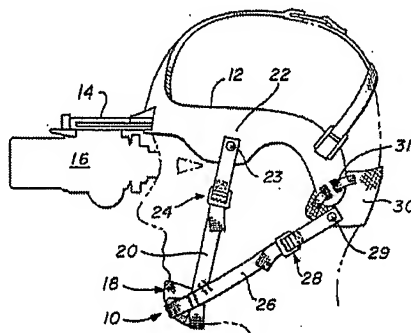
*WALLMAN DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION*

The Fourth Embodiment of the Present Claimed Invention includes front and rear pieces constructed to protect a wearer against physical injury from a blow to the head. The head dress of Wallman is designed to be merely decorative. Withdrawal of this rejection is respectfully requested.

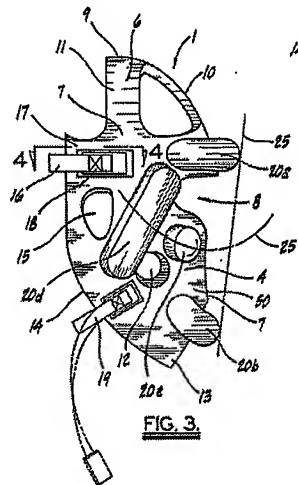
**4.0** *The Examiner has rejected claims 2-4, 10 and 11 under 35 U.S.C. §103(a) as obvious over Mattes (054) (United States Patent No. 4,741,054) in view of Gwon (United States Patent No. 4,068,323).*

SUMMARY OF CITED REFERENCE

**Mattes (054)** (United States Patent No. 4,741,054) discloses a chin cup (18) for use with military headgear (12). Mattes (054) attaches the chin cup (18) to the headgear (12) with a pair of overlapping chin straps (20 and 26). Chin strap (20), as shown in FIG 1, does NOT form a circumferential line of retention as the headgear has an open crown. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of intersection do NOT occur across the diameter of a circumferential line of retention).



**Gwon** (United States Patent No. 4,068,323) discloses a protective helmet (1) to be worn on a human head. The helmet (1) includes a protective pad (4) and a pair of straps (16 and 19) cooperatively attached to the back of the protective pad (4). The protective pad (4) and straps (16 and 19) embody two separate and distinct circumferential lines of retention which do NOT intersect when the helmet (1) is worn on the head.



#### SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

## LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. The disclosure of all elements, teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

The first criteria is relevant to this rejection.

### All Elements

In a fashion similar to the criteria for establishing anticipation, the first element for establishing a *prima facie* case of obviousness requires that the cited references disclose each and every element of the claimed invention. The distinction between application of this criteria in establishing anticipation and establishing obviousness is that the claimed elements must be found in a single reference to support an anticipation rejection while the claimed elements can be found in multiple references to support an obviousness rejection.

### *MATTES (054) AND GWON DO NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct *diametrically intersecting circumferential lines* of retention when the headguard is worn on the head. These circumferential lines of retention are NOT imaginary lines or projections, but constitute a tangible feature on the headgear.

The helmet of Mattes (054) does NOT form a circumferential line of retention as the headgear has an open crown. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of intersection do NOT occur across the diameter of a circumferential line of retention). The helmet of Gwon includes two separate and distinct circumferential lines of retention, but these lines of retention do NOT intersect when the helmet is worn on the head. Withdrawal of this rejection as to claims 2-4 is respectfully requested.

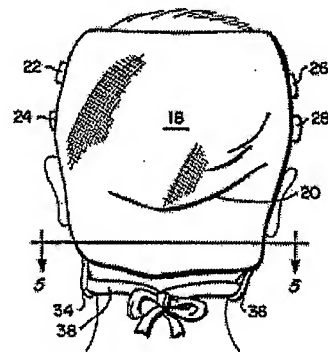
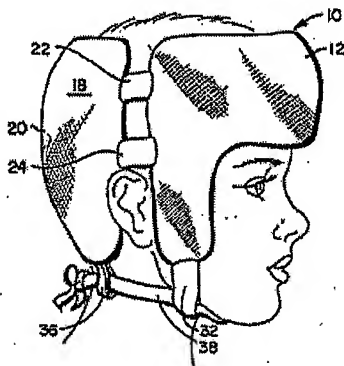
The Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct *diametrically intersecting* retention elements attached to the protective pad.

Neither the chin straps (20 and 26) on the helmet of Mattes (054) nor the pair of straps (16 and 19) on the helmet of Gwon intersect at diametric points when the helmet is worn on the head. Withdrawal of this rejection as to claims 10 and 11 is respectfully requested.

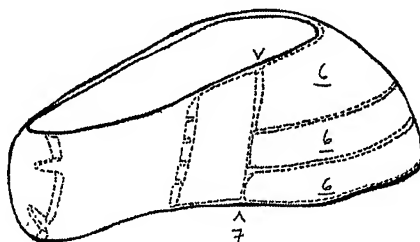
**5.0** *The Examiner has rejected claims 14-16 and 18 under 35 U.S.C. §103(a) as obvious over Steffen in view of Lampe et al. (399).*

#### SUMMARY OF CITED REFERENCE

**Steffen** (United States Patent No. 3,171,133) discloses a protective helmet (10) having a one-piece frontal pad (12) and a one-piece posterior pad (18) interconnected by left and right upper elastic straps (22 and 26) and left and right lower elastic straps (24 and 28).



**Lampe et al. (399)** (United States Patent No. 6,397,399) discloses a protective headguard comprising a headband with a multi-piece frontal pad and a single-piece posterior pad retained within pockets in the headband.



#### SUMMARY OF CLAIMED INVENTION

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece and a rear protective piece including a plurality of pads capable of shifting relative to one another.

#### LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. The disclosure of all elements, teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See, M.P.E.P. § 2143.

The first criteria is relevant to this rejection.

All Elements

In a fashion similar to the criteria for establishing anticipation, the first element for establishing a prima facie case of obviousness requires that the cited references disclose each and every element of the claimed invention. The distinction between application of this criteria in establishing anticipation and establishing obviousness is that the claimed elements must be found in a single reference to support an anticipation rejection while the claimed elements can be found in multiple references to support an obviousness rejection.

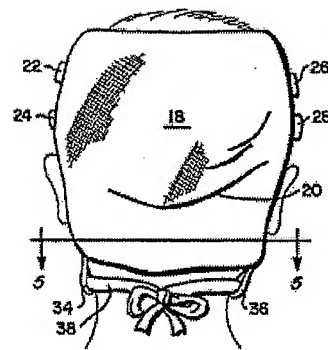
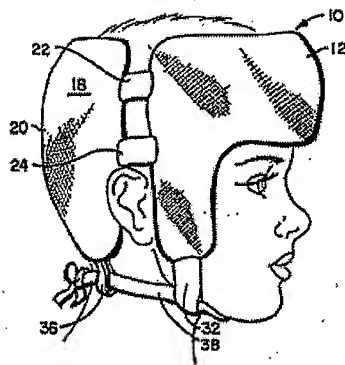
*STEFFEN AND LAMPE ET AL DO NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION*

The Third Embodiment of the Present Claimed Invention includes a rear protective piece with a plurality of pads capable of shifting relative to one another. The protective headguards of Steffen and Lampe et al. both have a one-piece posterior pad. Withdrawal of this rejection is respectfully requested.

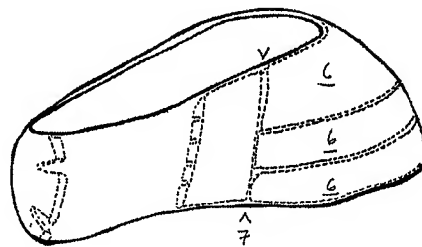
**6.0** *The Examiner has rejected claim 17 under 35 U.S.C. §103(a) as obvious over Steffen in view of Lampe et al. (399) and further in view of Mattes (054).*

SUMMARY OF CITED REFERENCE

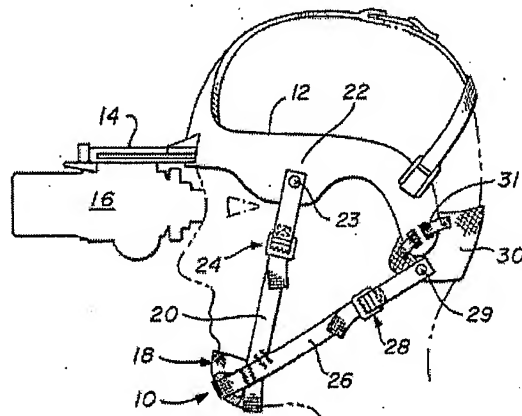
**Steffen** (United States Patent No. 3,171,133) discloses a protective helmet (10) having a one-piece frontal pad (12) and a one-piece posterior pad (18) interconnected by left and right upper elastic straps (22 and 26) and left and right lower elastic straps (24 and 28).



**Lampe et al. (399)** (United States Patent No. 6,397,399) discloses a protective headguard comprising a headband with a multi-piece frontal pad and a single-piece posterior pad retained within pockets in the headband.



**Mattes (054)** (United States Patent No. 4,741,054) discloses a chin cup (18) for use with military headgear (12). Mattes (054) attaches the chin cup (18) to the headgear (12) with a pair of overlapping chin straps (20 and 26). The headgear (12) depicted by Mattes (054) is a single continuous piece.



## SUMMARY OF CLAIMED INVENTION

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece and a rear protective piece including a plurality of pads capable of shifting relative to one another.

## LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. The disclosure of all elements, teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaack, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

The first criteria is relevant to this rejection.

### All Elements

In a fashion similar to the criteria for establishing anticipation, the first element for establishing a *prima facie* case of obviousness requires that the cited references disclose each and every element of the claimed invention. The distinction between application of this criteria in establishing anticipation and establishing obviousness is that the claimed elements must be found in a single reference to support an anticipation rejection while the claimed elements can be found in multiple references to support an obviousness rejection.



*STEFFEN, LAMPE ET AL. (399) AND MATTES (054) DO NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION*

The Third Embodiment of the Present Claimed Invention includes a rear protective piece with a plurality of pads capable of shifting relative to one another. The protective headguards of Steffen, Lampe et al. and Mattes (054) each have a one-piece posterior pad. Withdrawal of this rejection is respectfully requested.

### CONCLUSION

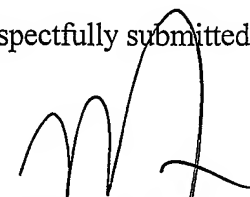
Applicant respectfully submits that all pending claims (claims 1-18 and 20) are in condition for allowance.

Date

9 July 89

Respectfully submitted,

By



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## CLAIMS APPENDIX

### PENDING CLAIMS

*United States Patent Application  
Serial No. 10/816,712*

1. A protective headguard to be worn on a human head, comprising a protective pad and a retention element cooperatively attached to the protective pad wherein the retention element embodies at least two separate and distinct tensioned and diametrically intersecting circumferential lines of retention when worn on the head.
2. The protective headguard of claim 1 wherein at least a segment of each circumferential line of retention is elastic.
3. The protective headguard of claim 2 wherein at least a segment of each circumferential line of retention is an elastic strap.
4. The protective headguard of claim 3 wherein the headguard further includes a length adjustment means cooperatively attached to each strap for permitting an adjustment of the length of each strap.
5. The protective headguard of claim 1 wherein the lines of retention intersect at intersection points and the intersection points are positioned proximate each temple of a wearer when the protective headguard is worn on the head.
6. The protective headguard of claim 1 wherein the headguard is configured and arranged so that one circumferential line of retention runs above an occipital bone of a wearer and another circumferential line of retention runs below the occipital bone of a wearer.
7. The protective headguard of claim 1 wherein the angle at which the circumferential lines of retention intersect when the headguard is worn is adjustable.

8. The protective headguard of claim 1 wherein the lines of retention intersect at intersection points and the intersection points may be circumferentially shifted.
9. A protective headguard to be worn on a human head, comprising a protective pad and a pair of separate and distinct, tensioned and diametrically intersecting retention elements attached to the protective pad.
10. The protective headguard of claim 9 wherein at least a segment of each retention element is elastic.
11. The protective headguard of claim 9 wherein the retention elements are elastic.
12. The protective headguard of claim 9 wherein the retention elements have a length and include a length adjustment means cooperatively attached to each retention element for permitting an adjustment in the tension of each retention element when the protective headguard is worn on the head.
13. The protective headguard of claim 9 wherein the protective pad and retention element are configured and arranged such that the diametric points of intersection of the retention elements are positioned proximate each temple of a wearer when the protective headguard is worn on the head.
14. A protective headguard to be worn on a human head, comprising:
  - (a) a rear protective piece including a plurality of pads capable of shifting relative to one another,
  - (b) a front protective piece,
  - (c) and a retention element interconnecting the front protective piece and the rear protective piece.
15. The protective headguard of claim 14 wherein the retention element is elastic.

16. The protective headguard of claim 15 wherein the retention element defines a strap.
17. The protective headguard of claim 14 wherein the retention element includes at least one strap and a length adjustment means cooperatively attached to the strap for permitting an adjustment of the length of the strap.
18. The protective headguard of claim 14 wherein the front protective piece includes a plurality of pads capable of shifting relative to one another.
20. A protective headguard to be worn on a human head, comprising a front piece and a rear piece wherein the front piece and the rear piece are constructed to protect a wearer against physical injury from a blow to the head and pivotally attached to one another at diametrically opposed pivot points whereby the front piece and the rear piece may be independently pivoted about the pivot points.

## **EVIDENCE APPENDIX**

NONE

## **RELATED PROCEEDINGS APPENDIX**

NONE